

COUNTY COUNCIL  
OF  
HARFORD COUNTY, MARYLAND

BILL NO. 02-25

Introduced by Council Member Stepp

Legislative Day No. 02-19 Date July 2, 2002

AN ACT to repeal and reenact, with amendments, Section 267-9, Board of Appeals; to repeal and reenact, with amendments, Subsection 267-13E, Suspension of zoning reclassifications, of Section 267-13, Comprehensive zoning review, all of Article II, Administration and Enforcement, of Part 1, Standards, of Chapter 267, Zoning, of the Harford County Code, as amended; to create a Board of Appeals; to establish the qualifications, terms and salary of the members, to establish the duties of the Board; to provide that the County Council may employ hearing examiners; to prohibit certain government employees from representing parties in zoning cases; to prohibit persons from attempting to influence Board members in deciding cases except in certain circumstances; to provide that persons contacting members be made aware of the prohibition of such contact; to provide for a penalty for violation of such prohibition; to prohibit Board members from discussing zoning cases except in certain circumstances; to provide that Board decisions be made in a public hearing and subject to the State's Open Meetings Act; to provide for staggered terms for Board members; and generally relating to the Board of Appeals.

July 2, 2002

By the Council, \_\_\_\_\_

Introduced, read first time, ordered posted and public hearing scheduled

on: August 6, 2002

at: 7:00 P.M.

By Order: James E. Massey, Jr., Council Administrator

**PUBLIC HEARING**

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on August 6, 2002, and concluded on, August 6, 2002.

James E. Massey, Jr., Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

## BILL NO. 02-25

Section 1. Be It Enacted By The County Council of Harford County, Maryland, That  
Section 267-9, Board of Appeals, and that Subsection 267-13E, Suspension of zoning  
reclassifications, of Section 267-13, Comprehensive zoning review, all of Article II,  
Administration and Enforcement, of Part 1, Standards, of Chapter 267, Zoning, be, and  
they are hereby, repealed and reenacted, with amendments, of the Harford County Code,  
as amended, to read as follows:

Chapter 267. Zoning.

Part 1. Standards.

Article II. Administration and Enforcement.

Section 267-9. Board of Appeals.

A. Establishment. [ In compliance with the provisions of the Charter, the Board of  
Appeals is continued. The County Council is hereby designated as the Board of  
Appeals. The President of the County Council or, in his absence, the Vice  
President shall act as the Chairman of the Board. Hearings before the Board shall  
be open to the public and quasi-judicial in nature.]

THERE IS A BOARD OF APPEALS CONSISTING OF 7 MEMBERS  
APPOINTED BY THE COUNTY COUNCIL, SUBJECT TO THE  
FOLLOWING:

(1) EACH MEMBER SHALL BE A QUALIFIED VOTER AND SHALL  
HAVE BEEN A RESIDENT OF THE COUNTY FOR AT LEAST 2  
YEARS PRIOR TO THE DATE OF APPOINTMENT;

(2) EACH COUNCIL MEMBER SHALL NOMINATE ONE  
CANDIDATE FROM HIS OR HER DISTRICT, AND THE

BILL NO. 02-25

1 COUNCIL PRESIDENT SHALL NOMINATE ONE CANDIDATE  
2 AT LARGE. ANY CANDIDATE NOT APPROVED BY THE  
3 COUNCIL SHALL BE REPLACED BY A NEW NOMINEE  
4 UNDER THE SAME PROCESS. THE COUNCIL SHALL  
5 DETERMINE THE INITIAL TERM LENGTHS OF EACH INITIAL  
6 APPOINTEE;

7 (3) THE COUNTY COUNCIL SHALL NOT APPOINT TO THE  
8 BOARD OF APPEALS ANY PERSON WHO HOLDS A POSITION  
9 OF PROFIT WITH THE HARFORD COUNTY GOVERNMENT OR  
10 ANY COUNCIL MEMBER'S SPOUSE, PARENT,  
11 GRANDPARENT, UNCLE, AUNT, CHILD, STEPCHILD,  
12 GRANDCHILD, BROTHER, SISTER, NIECE OR NEPHEW OR  
13 THE SPOUSE OF ANY OF THEM;

14 (4) TO THE EXTENT POSSIBLE, THE MEMBERS OF THE BOARD  
15 SHALL REPRESENT THE COUNTY'S POPULATION WITH  
16 RESPECT TO RACE, GENDER AND GEOGRAPHY;

17 (5) THE TERM OF A MEMBER IS 3 YEARS;

18 (6) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE  
19 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES;

20 (7) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN  
21 SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A  
22 SUCCESSOR IS APPOINTED AND QUALIFIES;

- 1           (8)   THE BOARD ANNUALLY SHALL ELECT A CHAIRMAN AND  
2               VICE CHAIRMAN, AND THE CHAIRMAN OR, IN THE  
3               CHAIRMAN'S ABSENCE, THE VICE CHAIRMAN SHALL  
4               PRESIDE AT THE BOARD MEETING;
- 5           (9)   EACH MEMBER OF THE BOARD IS ENTITLED TO AN  
6               ANNUAL SALARY OF \$3,500;
- 7           (10)  MEMBERS OF THE BOARD ARE EXPECTED TO PARTICIPATE  
8               IN ALL APPEALS UNLESS THERE IS GOOD CAUSE FOR  
9               THEIR ABSENCE. BOARD MEMBERS SHALL NOT NEGLECT  
10              THEIR DUTIES, ENGAGE IN MISCONDUCT, OR ATTEMPT TO  
11              PERFORM THEIR DUTIES WHILE IMPAIRED BY THE USE OF  
12              ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCES.  
13              MEMBERS SHALL NOT ENGAGE IN ACTIVITIES THAT MAY  
14              HAVE THE APPEARANCE OF IMPROPRIETY;
- 15          (11)  EACH MEMBER SHALL FILE A PUBLIC STATEMENT UNDER  
16               OATH, NO LATER THAN THE FIRST DAY OF JANUARY OF  
17               EACH YEAR, WITH THE CLERK OF THE CIRCUIT COURT FOR  
18               HARFORD COUNTY, DISCLOSING ANY INTEREST IN ANY  
19               ENTITY THAT OWNS LAND IN HARFORD COUNTY AND  
20               DISCLOSING ANY INTEREST IN LAND LOCATED IN  
21               HARFORD COUNTY HELD PERSONALLY OR BY A SPOUSE  
22               DURING THE PRECEDING YEAR; AND

(12) SUBJECT TO THE APPROVAL OF THE COUNTY COUNCIL,  
THE BOARD MAY EMPLOY A STAFF.

B. Powers and duties. The Board shall be vested and charged with all the powers and duties created by this Part 1, including but not limited to the power and duty to:

(1) Hear and decide any zoning case brought before the Board and to impose such conditions or limitations as may be necessary to protect the public health, safety and welfare.

(2) [Adopt rules and regulations governing procedure before the Board consistent with the Charter and this Part 1.]

[(3)] Perform any act, issue any order or adopt any procedure consistent with law applicable to administrative agencies in general and the provisions of this Part 1.

C. Hearing Examiners. The [Board] COUNTY COUNCIL may employ Hearing Examiners to hear zoning cases within the jurisdiction of the Board pursuant to procedural rules adopted by the [Board] COUNCIL. The Hearing Examiner shall have the authority, duty and responsibility to render recommendations in all cases, subject to final approval of the Board. Such recommendations shall be consistent with the requirements of Subsection H, Decision of the Board.

D. Filings. Applications for variances, interpretations, special exceptions, special developments and reclassification shall be filed with the Zoning Administrator by the property owner, authorized agent or contract purchaser. Appeals from the decision of the Zoning Administrator shall be filed with the Zoning Administrator by the property owner, authorized agent or any person aggrieved.

E. Hearings. Proceedings before the Hearing Examiner and the Board shall be quasi-judicial in nature and conducted in accordance with the rules of procedure of the Board in such a manner as to afford the parties due process of law.

F. Recommendation of the Hearing Examiner. The recommendation of the Hearing Examiner shall be deemed to be adopted by the Board, unless final argument is requested within [twenty (20)] 20 days from the date of the written recommendation.

G. Request for final argument. A request for final argument before the Board may be filed by [any Board member,] the applicant, the People's Counsel or a person aggrieved who registered as a party to the proceedings before the Hearing Examiner. The People's Counsel, provided that the People's Counsel was a party to the proceedings, shall be deemed to be a person aggrieved and shall have standing to request final argument. Upon filing a request for final argument, the Board shall notify all parties to the proceeding.

H. Decision of the Board. The decision of the Board shall be in writing and shall specify findings of fact and conclusions of law. The Board may affirm, reverse, modify or remand the Hearing Examiner's recommendation. In reviewing the recommendation of the Hearing Examiner, the Board shall give consideration to the opportunity of the Hearing Examiner to see and hear the witnesses and to judge their credibility. The Board may specify the circumstances under which additional evidence can be accepted by the Hearing Examiner and may remand the case for determination of limited issues.

Decisions of the Board shall be subject to appeal in accordance with the Charter.

I. Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of

1 this Part 1, the Board shall not approve an application if it finds that the proposed  
2 building, addition, extension of building or use, use or change of use would adversely  
3 affect the public health, safety and general welfare or would result in dangerous traffic  
4 conditions or jeopardize the lives or property of people living in the neighborhood. The  
5 Board may impose conditions or limitations on any approval, including the posting of  
6 performance guaranties, with regard to any of the following:

- 7 (1) The number of persons living or working in the immediate area.
- 8 (2) Traffic conditions, including facilities for pedestrians, such as sidewalks  
9 and parking facilities, the access of vehicles to roads; peak periods of traffic; and  
10 proposed roads, but only if construction of such roads will commence within the  
11 reasonably foreseeable future.
- 12 (3) The orderly growth of the neighborhood and community and the fiscal  
13 impact on the county.
- 14 (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise  
15 upon the use of surrounding properties.
- 16 (5) Facilities for police, fire protection, sewerage, water, trash and garbage  
17 collection and disposal and the ability of the county or persons to supply such  
18 services.
- 19 (6) The degree to which the development is consistent with generally accepted  
20 engineering and planning principles and practices.
- 21 (7) The structures in the vicinity, such as schools, houses of worship, theaters,  
22 hospitals and similar places of public use.

(8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

(9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

(10) The preservation of cultural and historic landmarks.

J. Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order of the Board or a court of competent jurisdiction, on application after notice to the Zoning Administrator and on good cause shown.

K. Application disapproved.

(1) Failure to pay costs.

(a) Except as provided in Subsection K (2) of this section, and except as provided in § 267-11C, if the application is disapproved by the Board or is dismissed for failure of the applicant to pay costs, the Board shall take no further action on another application for substantially the same relief until after one (1) year from the date of such disapproval or dismissal or any final decision by a court of competent jurisdiction, whichever shall last occur.

(b) Dismissal for failure to pay costs shall be without prejudice.

(c) If an appeal to the Board is perfected and the public hearing date set by the posting of the property and thereafter the applicant withdraws the appeal, the



applicant shall be precluded from filing another application for substantially the same relief for six (6) months from date of withdrawal.

(2) Subsection K (1)(a) of this section does not apply to an application that is denied pursuant to § A274-5B (3)(c) of the Board's rules of procedure for zoning applications, as codified in the Appendix to this Code. An application denied pursuant to that section is denied without prejudice and may be refiled at any time.

L. Any person, firm or corporation who fails to comply with the requirements or conditions imposed by the Board of Appeals shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.) for each offense. Each day of a continuing violation shall be considered a separate misdemeanor.

M. RESTRICTIONS IN ZONING CASES.

(1) EMPLOYEES OF THE STATE AND COUNTY SHALL NOT APPEAR IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANY PRIVATE PARTY IN ANY ZONING CASE.

(2) NO PERSON SHALL INFLUENCE OR ATTEMPT TO INFLUENCE, DIRECTLY OR INDIRECTLY, EITHER THE BOARD OF APPEALS OR ONE OF ITS HEARING EXAMINERS IN ARRIVING AT A DECISION IN ANY PENDING ZONING CASE, EXCEPT AS THAT PERSON MAY APPEAR BEFORE THE HEARING AND AS A PARTY OR AS A REPRESENTATIVE OR WITNESS ON BEHALF THEREOF.

(3) IN ORDER TO ASSURE COMPLIANCE HERewith, ANY PERSON CONTACTING A MEMBER OF THE BOARD OF APPEALS IN VIOLATION OF THIS SUBSECTION SHALL BE IMMEDIATELY INFORMED OF THE PROVISIONS OF THIS SUBSECTION.

(4) ANY PERSON WHO KNOWINGLY AND INTENTIONALLY VIOLATES ANY OF THE PROVISIONS OF THIS SECTION SHALL, UPON CONVICTION, BE IMPRISONED FOR NOT MORE THAN SIX MONTHS, OR BE FINED NOT MORE THAN \$1000, OR BOTH IMPRISONED AND FINED.

(5) MEMBERS OF THE BOARD SHALL NOT DISCUSS A PENDING ZONING CASE WITH ANYONE OTHER THAN OTHER MEMBERS OF THE BOARD OR THE STAFF OF THE BOARD OF APPEALS.

(6) ALL DECISIONS OF THE BOARD SHALL BE MADE AT A PUBLIC HEARING SUBJECT TO THE STATE'S OPEN MEETINGS ACT.

N. ANY PERSON WHO BELIEVES A MEMBER OF THE BOARD OF APPEALS HAS VIOLATED A PROVISION OF THIS SECTION OR THE BOARD OF APPEALS RULES OF PROCEDURE MAY FILE A COMPLAINT WITH THE BOARD OF ETHICS. A COMPLAINT SHALL BE FILED IN THE MANNER PROVIDED IN § 23-4 OF THE HARFORD COUNTY CODE.

Section 267-13. Comprehensive zoning review.

E. Suspension of zoning reclassification.

(1) Notwithstanding any provisions of this Code, during the period of preparation and review of proposed comprehensive revisions or amendments to the Zoning

1 Maps, no applications for zoning reclassification shall be accepted by the  
2 county, except as provided in subsection C of this section, and such request  
3 shall be considered in the preparation or modification of the proposed  
4 comprehensive revisions or amendments to the Zoning Maps.

5 (2) The hearing examiner shall complete public hearings and issue a decision for  
6 each existing zoning reclassification application as soon as practicable. The  
7 Director of Planning shall review each such application as a part of the  
8 comprehensive zoning review process as if the application had been filed  
9 pursuant to Subsection C of this section.

10 (3) No zoning reclassification of property shall, for a period of 1 year after the  
11 adoption, by Bill, of comprehensive zoning maps applicable thereof, be granted  
12 by [the County Council, sitting as] the Board of Appeals, on the ground that the  
13 character of the neighborhood has changed.

14 Section 2. And Be It Further Enacted, That the terms of the initial appointed  
15 members of the Board of Appeals shall be as follows:

16 A. Three shall be appointed for terms of 3 years;

17 B. Three shall be appointed for terms of 2 years; and

18 C. One shall be appointed for a term of 1 year.

19 Section 3. And Be It Further Enacted, That this Act shall take effect from and after  
20 the 30<sup>th</sup> day following the General Election to be held in November, 2002, contingent on  
21 County Council Bill No. 02-24 being approved by the electorate at the election to be held  
22 in November, 2002 , and if County Council Bill No. 02-24 is not approved by the

1 electorate at the election held in November 2002 , this Act shall be null and void without  
2 the necessity of further action by the County Council.

3 EFFECTIVE:  
4  
5

*The Council Administrator does hereby certify  
that fifteen (15) copies of this Bill are immediately  
available for distribution to the public and the  
press.*

  
Council Administrator

**BILL NO. 02-25**

HARFORD COUNTY BILL NO. 02-25

Brief Title) Board of Appeals

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

**CERTIFIED TRUE AND CORRECT**

**ENROLLED**

\_\_\_\_\_  
Administrator

Date \_\_\_\_\_

Date \_\_\_\_\_

**BY THE COUNCIL**

Read the third time.

Passed: LSD \_\_\_\_\_

Failed of Passage: \_\_\_\_\_

By Order

\_\_\_\_\_  
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_\_ day of \_\_\_\_\_, 2002, at 4:00 p.m.

\_\_\_\_\_  
Council Administrator

**BY THE EXECUTIVE**

\_\_\_\_\_  
COUNTY EXECUTIVE

APPROVED: Date \_\_\_\_\_

**BY THE COUNCIL**

THIS BILL (NO. 02-25), SUBSEQUENT TO THE PUBLIC HEARING ON LEGISLATIVE DAY 02-20 (AUGUST 6, 2002) WAS WITHDRAWN FROM FURTHER CONSIDERATION BY THE SPONSOR.

\_\_\_\_\_  
Council Administrator

**BILL NO. 02-25**